

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

CARLOS MANUEL AYESTAS, a/k/a
Dennis Humberto Zelaya Corea

Petitioner,

V.

BOBBY LUMPKIN, Director, Texas
Department of Criminal Justice,
Correctional Institutions Division

Respondent.

USDC No. 4:09-cv-2999

Capital Case

PETITIONER'S SECOND STATEMENT REGARDING PROPOSED SCHEDULE

In accordance with the Court's August 30, 2021 Order, Petitioner proposes the below schedule for remaining deadlines in the case. The parties have not reached agreement on a proposed schedule because the Director continues to maintain that no schedule is necessary. Petitioner respectfully submits that the Director misconstrues this Court's orders.

On August 12, 2021, the Court granted post-judgment relief and ordered the Parties to meet and confer on a schedule for developing facts relating to Petitioner’s claim of unconstitutional discrimination. The Director declined to discuss the schedule proposed by Petitioner on the ground that the August 12 Order did not permit amendment of the habeas petition. On August 30, 2021, following briefing on the disputed scheduling question, this Court set a deadline for Petitioner to file an amended petition and for the parties to “confer regarding a schedule for remaining deadlines, including discovery limited to the issues raised by the Siegler Memo.” Dkt. 96.

After that Order, Petitioner again attempted to meet and confer with the Director regarding a schedule for remaining deadlines. This time, the Director advised Petitioner that he considered it inappropriate to proffer a scheduling order without the Court resolving his anticipated objections. The Director explained that he interprets the Court's order not to reopen the judgment but to grant Petitioner's 60(b) motion only insofar as it returns the parties to a Rule 59 posture. Petitioner disagrees that the Court's Order directing Petitioner to "file his first amended petition by September 28, 2021" and instructing the parties to confer over a scheduling that "include[es] discovery" permits the Director's interpretation.

Petitioner accordingly submits this proposed schedule without the Director's agreement:

Event	Date
Initial Discovery Requests	October 12, 2021
Substantial Completion of Document Productions	March 7, 2022
Fact Discovery Deadline	April 7, 2022
Plaintiff Opening Expert Report Due	April 21, 2022
Defense Expert Report Due	May 21, 2022
Plaintiff Rebuttal Expert Report Due	June 7, 2022
Expert Discovery Deadline	June 21, 2022
Second Amended Pleading	June 28, 2022
Submit Exhibit lists, Stipulations, Witness Lists, Deposition designations to the Court; File motions	July 19, 2022
Counter-designations and Responses to Motions	August 2, 2022
Counter-counter Designations and Replies to Motions	August 16, 2022
Pre-hearing Conference	August 30, 2022
Hearing	September 30, 2022

Petitioner also respectfully submits that future discussions between the parties may be aided if the Court reiterates in its order that it has granted the post-judgment relief necessary to allow Petitioner to amend his petition and to add claims pertaining to the Siegler Memorandum.

Dated: September 14, 2021

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Respectfully submitted,

/s/ Lee B. Kovarsky

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Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of September 2021, I electronically filed the above and foregoing document using the CM/ECF system, which automatically sends notice and a copy of the filing to all counsel of record.

/s/ Lee Kovarsky